THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 1106 of 1999

O r d e r:

Assailing the order dated 25.06.1998 passed by the Depot Manager, APSRTC, Narsampet Depot, vide proceedings
No. P2/255(13)/98-NRT, retiring the petitioner from service on medical grounds w.e.f. 02.06.1998, he filed the present writ petition.

The petitioner joined the services of the respondents-APSRTC as a Driver in 1987, and his services were regularized on 01.07.1989. During the course of his employment, it appears that he had some defect in his left eye, and the Doctor at the APSRTC Hospital, Tarnaka, who treated the petitioner, declared him to be medically unfit to work as a Driver. In pursuance thereof, respondent No.2, passed the impugned proceedings, retiring the petitioner from service.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that the petitioner on being declared as medically unfit to work as a Driver, in terms of Regulation 6A(4) of the APSRTC Employees (Service) Regulations, 1964, represented to the authorities concerned, to provide him suitable alternative employment, but without considering his request, respondent No.1 passed the impugned order retiring the petitioner from service, which is illegal and arbitrary. He submitted that having regard to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the respondents are not entitled to dispense with the services of the petitioner, and they are bound to provide him suitable alternative employment with the same pay scale and service benefits, and in support of this submission, he placed strong reliance on the judgment of the apex Court in **Kunal Singh v. Union of India**. He thus prayed that the impugned order be set aside and the respondents be directed to provide suitable alternative employment to the petitioner.

The respondents did not file counter. However, they produced the relevant record, which led to the petitioner being retired from service on medical grounds. The learned Standing Counsel for the respondents contended that the petitioner on being declared medically unfit, requested the respondents to pay additional monetary benefit in lieu of alternative employment as he is not inclined to work as Cleaner, and considering such request of the petitioner, the impugned order retiring the petitioner from service on medical grounds, was passed by respondent No.2, and pursuant to his retirement, the petitioner has also taken the retirement and additional monetary benefit. He submitted that since the petitioner was retired on his

request, no exception can be taken to the impugned order, retiring him from service on medical grounds, and more so when he has taken the retirement and additional monetary benefits. He thus prayed that the writ petition be dismissed.

There can also be no quarrel on the proposition of law laid down by the apex Court in **Kunal Singh v. Union of India**, on which the learned counsel for the petitioner placed strong reliance in support of his contention, that having regard to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955, the services of an employee who acquires disability during his service, if unsuitable for the post he is holding, cannot be dispensed with, and has to be shifted to some other post with same pay scale and service benefits, and that if he cannot be adjusted, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

The petitioner, who is having a defect in his left eye, was declared medically unfit to work as Driver by the Doctor of the APSRTC Hospital at Tarnaka. As per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the provisions of Regulation 6A(4) of the APSRTC Employees (Service) Regulations, 1964, there can be no doubt that the petitioner is entitled to be provided alternative employment or reverted to the post in which he had previously worked, but in the instant case, it is the case of the respondents, and in fact, is evident from the record produced before me that the petitioner has himself, vide his letter dated 24.09.1998, written in Telugu, informed the Depot Manager, APSRTC, Narsampet, that he has been declared medically unfit, that he is not interested to work as Cleaner, and that he be retired from service, and in lieu of alternative employment, he be paid additional monetary benefit. Respondent No.2 acting on this letter of the petitioner, had passed the impugned order retiring him from service. Had there been no letter written by the petitioner, he would have been justified in contending that the impugned order, retiring him from service without providing him alternative employment, is illegal and bad.

The petitioner contends that he had given such a letter on the advise of and at the instance of the officers and not on his own volition. I am unable to agree with this contention of the petitioner, for the reason that after having been declared medically unfit, he had much time at his disposal to take advise from his well-wishers whether to take retirement or seek suitable alternative employment before giving such a letter, but the petitioner instead of seeking suitable alternative employment, has himself informed respondent No.2 that he is not interested to work as Cleaner and that he be paid the retirement and additional monetary benefit, and the petitioner having been retired from service on medical grounds on his request, it is stated to by the respondents and admitted to by the petitioner in the writ petition itself that he has taken the retirement and additional monetary benefits. The petitioner having been retired from service on medical grounds on his request, and he having taken all the retirement and additional monetary benefit in lieu of alternative employment, now cannot be allowed to complain that the impugned order retiring him from service on medical grounds without providing him alternative employment, is bad. In that view

of the matter reliance placed by the learned counsel for the petitioner on the judgment of the apex Court in **Kunal Singh v. Union of India**, does not come to his rescue.

For the foregoing reasons, I find no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: December, 2005.

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